



**Virginia
Regulatory
Town Hall**

Final Regulation Agency Background Document

Agency Name:	Board of Counseling, Department of Health Professions
VAC Chapter Number:	18 VAC 115-60-10 et seq.
Regulation Title:	Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners
Action Title:	Fee increases
Date:	4/30/01

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Board is proposing fee changes in compliance with a statutory requirement for the Board to collect sufficient revenue to cover the expenditures of administering the regulatory program. The proposed fees are equivalent adopted by the Board in 2000 for its other two licensure categories and have been developed in accordance with agency's Principles for Fee Development.

Overall, this proposal will result in an increase in fees for services provided by the Board. For example, the proposed renewal fee will increase the cost of renewal by \$15 per year. The proposal includes an initial licensure fee with the licensure application fee, which will increase the cost of applying for licensure from \$100 to \$140. A new flat fee of \$165 for reinstatement of a license lapsed more than one year is proposed to replace the current requirement to reapply under the current regulations. The proposal also includes a fee of \$500 for reinstatement of a license following disciplinary action resulting in revocation or suspension of a license.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

There have been no changes made since the publication of the proposed regulation.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On April 27, 2001, the Board of Counseling adopted final amendments to 18 VAC 115-60-10 et seq., Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners, in order to establish fees that are consistent with other professions licensed by the Board.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*

4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The proposed regulation is mandated by § 54.1-113; however the Board must exercise some discretion in the amount and type of fees that will be increased in order to comply with the statute.

§ 54.1-113. Regulatory boards to adjust fees.--Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Because of the increased expenditures and reduced revenues, the Board is now compelled to increase renewal fees and application fees according to the *Principles for Fee Development*. As a specially funded agency, renewal fees pay the vast majority of the expenses of Board operations, which include investigation of complaints against licensees, adjudication of disciplinary cases, verification of licensure to other jurisdictions and entities, and communications with licensees about current practice and regulation. Adequate funding is essential carry out the investigative and disciplinary activities of the Board in order to protect the public health, safety and welfare.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The final amendments will increase the renewal fee by \$15 per year. The amended application fee more accurately reflects the cost of staff time, reviewer time, mailing and copying costs, data processing and telephone costs for each applicant, and includes an initial licensure fee based on the average time from issuance of the initial license to the first renewal. This will increase the cost to applicants by \$40. The change in the fee to register an additional supervisor or change a supervisor will reduce the cost to the applicant by \$10 per registration.

The amendment increases the fee for renewal of a license lapsed less than one year by \$10. A new requirement for reinstatement of a license that has lapsed more than one renewal period is adopted in accordance with that for other licensure categories and is based on a credential review fee, the

late fee, and ½ of the current renewal fee, since the reissue is likely to take place after part of the renewal period has already passed.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

An analysis of revenues and expenditures conducted at the end of the 1996-1998 biennium projected that under the current fee structure, the Board would face a 46% deficit at the end of the 1998-2000 biennium, an 84% deficit at the close of the 2000-2002 biennium, and a 123% deficit at the close of the 2000-2004 biennium. In order to remain in compliance with §54.1-113 of the Code of Virginia, the Board adopted a proposal for fee increases for all of its licensure and certification categories that will offset the projected deficit through 2004. At the time the proposal was adopted, 18 VAC 115-60-10 et seq. existed only as a proposed regulation, and a fee change could not be proposed.

In developing the fee proposal for this and all of its regulations, the agency's Finance Office used a new set of principles by which all boards are guided in the development of regulations. *The Principles for Fee Development* are intended to provide structure, consistency, and equity for all professionals regulated within the Department. In consideration of various alternatives and issues surrounding the adoption of fees, the *Principles* served to guide the Board in the development of appropriate and necessary fees.

ISSUE 1. Uniformity in renewal and application fees across professions.

As is stated in the *Principles*, renewal fees for all occupations regulated by a board should be consistent across occupations unless there is clear evidence to indicate otherwise. Professional counselors, marriage and family therapists and substance abuse treatment practitioners are all licensed for the independent delivery of mental health services. As a result, the relative numbers and kinds of disciplinary problems encountered by these professions are similar, and the cost of administering the disciplinary programs is also similar. Therefore, the Board is proposing the same renewal fee as will soon take effect for the other two licensure categories. Likewise, the education and experience requirements for the three licensure categories are similar, resulting in a comparable amount of work to process and review applications. The Board is proposing that \$75 of the initial licensure fee be attributed to credentials review for substance abuse treatment practitioner applicants, based on the cost of staff time, reviewer time, mailing and copying costs, data processing and telephone costs for each applicant. Likewise, the board is proposing a \$50 review fee for initial registrations of supervision and a \$25 fee for subsequent registrations for substance abuse treatment practitioner applicants.

Advantages and disadvantages to the licensees

All substance abuse treatment practitioners will experience increased renewal fees under the proposed regulations. While that is a disadvantage to the licensees, the alternative of reduced services for the Board would be unacceptable to applicants, licensees and the general public. As a specially funded agency, renewal fees pay the vast majority of the expenses of Board operations, which include investigation of complaints against licensees and certificate holders, adjudication of disciplinary cases, verification of licensure and education to other jurisdictions and entities, and communications with licensees and certificate holders about current practice and regulation.

ISSUE 2: Establishment of initial licensure fees.

For all professions governed by the Board, the initial licensure fee has historically been considered part of the application fee. This allowed for immediate processing of the license following notification of a passing exam score for an applicant. However, the fee was not developed according to any set formula consistent among boards in the agency. Under the new *Principles for Fee Development*, the initial application fees should include the cost of credentials review, an appropriate portion of the license fees, and cost of the wall certificate.

One method of assessing an initial licensure fee is prorating the fee based on the amount of time remaining in the renewal period. The Board is not proposing prorated fees because other boards in the agency have determined that the additional steps involved (assessing fee, notifying applicant, processing check, notifying applicant again if check is not mailed until the next fee period begins, etc.) result in delays in licensure processing and can create more burden and lost income for the applicant than any benefit from the prorated fees. In the proposed regulations, applicants will be assessed a fee to cover ½ of the renewal period, which is the average initial licensure period.

Advantages and disadvantages to the licensees

As is stated above, the advantage of not prorating fees is that initial licensure can occur in a more timely manner. For those who are applying for licensure by examination, the license is issued as soon as examination results are forwarded to the Board, usually within one or two working days. For those applying for licensure by endorsement, a license is typically issued within one or two days of receipt of all verifying documentation.

ISSUE 3. Establishment of different fees for renewing an expired license versus reinstating a lapsed license.

Currently, the Board's regulations allow for late renewal for up to one year with a \$25 penalty, after which the licensee has to reapply according to the regulations in effect at the time. In conformance with the *Principles for Fee Development*, the Board is proposing a penalty fee assessed at 35% of the renewal fee for licenses which have lapsed one renewal period, and a reinstatement application requirement for individuals whose licenses have lapsed beyond one renewal period. Since a reinstatement application is required for a licensee to reinstate a lapsed license, the proposed reinstatement fee includes the current renewal fee, the late fee, and a credential review fee.

Advantages and disadvantages to the licensees

The penalty fee for late renewal within the first renewal period will increase, which is a disadvantage to licensees. However, the proposal presents an advantage for individuals whose licenses have lapsed more than one renewal period. Under the current regulations, individuals who have lapsed more than one renewal cycle must reapply according to the current regulations. If the requirements for licensure change significantly, an individual returning to Virginia after a lengthy absence may find that he is no longer eligible for the category of licensure or certification he once held. The proposed change will allow the Board to use discretion as to whether an individual has maintained competency to perform the functions within the scope of practice of the license. For individuals who hold multiple licenses under the Board, the proposal establishes a consistent policy for each license held.

ISSUE 4. Reinstatement after revocation

Reinstatement of a license which has been suspended or revoked necessitates an additional cost of a hearing before a panel of the Board. The estimated cost of a hearing, including Board member per diems, staff time and associated expenses is approximately \$500. The Board is proposing that individuals whose licenses have been suspended or revoked incur the cost of the reinstatement hearing.

ISSUE 5. Uniformity among boards for setting miscellaneous fees.

In setting proposed fees for miscellaneous activities of the Board, the *Principles* call for uniformity among boards and regulated entities. The Board is proposing fees for replacement of a duplicate license, duplicate certificate, and processing and collecting on a bad check based on cost estimates provided by the Deputy Director for Finance of the Department that will be standardized among all boards in the agency.

Advantages and disadvantages to the licensees

The advantage of proposed regulations is that all persons licensed or certified by a board under the Department of Health Professions will consistently pay a fee for miscellaneous activities determined by actual costs for that activity. There will not be inconsistent fees for licensees regulated under different boards.

Advantage or disadvantages to the public

Fee increases proposed by the Board should present no disadvantage to the consuming public. The increase in renewal fees is not substantial. The proposed fees are based on the equivalency to the board's other two licenses in terms of costs to administer the licensure programs. There would be considerable disadvantages to the public if the Board took no action to address its deficit and increase fees to cover its expenses. The only alternative currently available under the Code of Virginia would be a reduction in services and staff, which would result in delays in licensing applicants who would be unable to work and delays in approval or disapproval of education programs. Potentially, the most serious consequence would be a reduction in or reprioritization of the investigation of complaints against regulated individuals. In addition, there may be delays in adjudicating cases of violations of the standards of practice, resulting in potential danger to clients who are often emotionally vulnerable to unscrupulous practitioners.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

A public hearing was held before the Board of Counseling at the Department of Health Professions in Richmond on February 1, 2001. No comment was presented at that time.

During the 60-day comment period from January 29, 2001 to March 30, 2001, there were no comments received.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 115-60-20. Fees required by the Board.

Proposed fees are amended as follows:

- A decrease in the fee for review of a new or additional supervision contract is proposed to reflect the diminished cost of reviewing a contract for an individual who has previously submitted documentation to the Board.
- The proposal establishes new initial licensure by examination and initial licensure by endorsement fees of \$140 to cover cost of review of application materials (\$75), the licensure fee for ½ of a renewal period, which is the average initial licensure period for new licensees, and a \$10 fee for a wall certificate.
- A renewal fee increase is proposed from a \$90 annual renewal to a \$105 annual renewal. The proposed renewal fee reflects the cost of the administrative and disciplinary activities of the Board and the allocated costs of the Department.
- The cost for producing and sending a duplicate license has been reduced, so the proposed fee decreases from \$15 to \$5 and reflects the actual cost.
- An increase in the cost for verification of licensure to another jurisdiction from \$10 to \$25 is proposed to cover the administrative costs of retrieving and copying a file from the microfilm archive, and the mailing costs of the file.
- An increase in the late renewal fee from \$25 to \$35 is adopted to establish a fee that is 35% of the renewal fee in accordance with the agency's *Principles for Fee Development*.

- A new fee is adopted for reinstatement of a license that has lapsed beyond one full renewal period. This fee is based on the cost of reviewing a reinstatement application, plus ½ of the annual renewal fee, plus the penalty fee for late renewal.
- The fee of \$25 is estimated to be the actual administrative costs for processing and collecting on a returned check; it is the same fee for all boards within the Department.
- A new fee of \$500 is proposed for reinstatement of a license that has been revoked or suspended following disciplinary action. This fee is based on the cost of the review of the background investigation and reinstatement application, and the cost of holding an informal conference to consider the reinstatement.
- A change is proposed for the payment instruction to clarify that some fees are paid directly to the Board, and others (not included in the regulation) are established by and paid to the vendor.

18 VAC 115-60-40. Application for licensure by examination

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-60-20.

18 VAC 115-60-50. Application for licensure by endorsement.

Minor changes are proposed to conform the language in this section with that in 18 VAC 115-60-20.

18 VAC 115-60-120. Late renewal; reinstatement.

A reinstatement procedure is proposed to replace the current reapplication requirement, requiring payment of a reinstatement fee. The reinstatement fee was determined based on the administrative and review costs which are the same as that determined for initial licensure, plus a late renewal fee. This is in conformance with the *Principles for Fee Development* for all boards within the Department.

18 VAC 115-60-150. Reinstatement following disciplinary action.

A minor change is proposed to include suspended licenses in the instruction for reinstatement following disciplinary action.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The changes will have no effect on the authority or rights of parents in the education, nurturing and supervision of their children. Fee increases will allow the regulatory program to operate without delays, which may help individuals suffering from an addiction achieve and maintain economic self-sufficiency and self pride and assume responsibility. This may also strengthen the marital commitment for individuals or their spouses who need substance abuse services. The increase of

\$15 per year in the fee to renew and maintain a license to practice substance abuse treatment should not affect the cost of substance abuse treatment services in Virginia. The increase in the application fee will impact individuals who are obtaining the license for the first time, but is not likely to discourage those who want to hold the license and use the title. The most significant impact will be on individuals seeking reinstatement after revocation or suspension of a license, but it is considered appropriate to have these costs borne by the offending licensee who voluntarily seeks reinstatement, rather than the entire population of licensees, the vast majority of which have not committed any offense.